Administrative Law Judge deems appropriate. Any brief, proposed findings of fact and conclusions of law, and oral argument must be included as part of the record of the proceeding.

Subpart H—Evidence

§ 20.801 General.

A party is entitled to present its case or defense by oral, documentary, or demonstrative evidence; to submit rebuttal evidence; and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

§ 20.802 Admissibility of evidence.

(a) The Administrative Law Judge may admit any relevant oral, documentary, or physical evidence, unless privileged.

(b) Relevant evidence is evidence having any tendency to make the existence of any material fact more probable or less probable than it would be without the evidence.

(c) The Administrative Law Judge may exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 20.803 Hearsay evidence.

Hearsay evidence is admissible in proceedings governed by this part. The fact that evidence is hearsay may be considered by the Administrative Law Judge when determining the probative weight of the evidence.

§ 20.804 Objections and offers of proof.

(a) A party shall state briefly the grounds for objection to the admission or exclusion of evidence. Rulings on all objections must appear in the record. Only objections made before the Administrative Law Judge may be raised on appeal.

(b) Whenever evidence is excluded, the party offering such evidence may make an offer of proof, which must be included in the record.

§ 20.805 Proprietary information.

(a) Without limiting the discretion of the Administrative Law Judge to give effect to applicable privileges, the Administrative Law Judge may limit introduction of evidence or issue such protective or other orders that in his or her judgment may be consistent with the objective of preventing undue disclosure of proprietary matters, including, but not limited to, matters of a business nature.

(b) Where the Administrative Law Judge determines that information in documents containing proprietary matters should be made available to another party, the Administrative Law Judge may direct the party having possession of the documents to prepare a non-proprietary summary or extract of the original. The summary or extract may be admitted as evidence in the record.

(c) If the Administrative Law Judge determines that this procedure is inadequate and that proprietary matters must form part of the record in order to avoid prejudice to a party, the Administrative Law Judge may advise the parties and provide opportunity for arrangements to permit a party or representative to have access to the evidence.

[CGD 91–228, 59 FR 15022, Mar. 30, 1994; 59 FR 45757, Sept. 2, 1994]

§ 20.806 Official notice.

The Administrative Law Judge may take official notice of such matters as might be judicially noticed by the courts or of other facts within the specialized knowledge of the Coast Guard as an expert body. Where a decision or part of a decision rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice must be stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

§ 20.807 Exhibits and documents.

(a) All exhibits must be numbered and marked with a designation identifying the party or interested person introducing the exhibit. The original of each exhibit offered in evidence or marked for identification must be filed

and retained in the record of the proceeding, unless the Administrative Law Judge permits the substitution of copies for the original document. Copies of each exhibit must be supplied by the party or interested person introducing the exhibit to the Administrative Law Judge and to every party to the proceeding.

(b) Unless otherwise directed by the Administrative Law Judge, proposed exhibits to be offered upon direct examination should be exchanged or made available for inspection 5 days prior to the hearing. The authenticity of all exhibits submitted prior to the hearing will be deemed admitted unless written objection is filed and served on all parties, or unless good cause is shown for failure to file a written objection.

§ 20.808 Written testimony.

The Administrative Law Judge may enter into the record written statements of witnesses that are sworn or affirmed under penalties of perjury. Witnesses whose testimony is presented by written statement shall be or have been available for oral cross-examination.

§ 20.809 Stipulations.

The parties and interested persons may stipulate, in writing, at any stage of the proceeding or orally at the hearing, to any pertinent facts or other matters fairly susceptible of stipulation. Stipulations are binding on the parties to the stipulation.

Subpart I—Decisions

§ 20.901 Summary decision.

(a) Any party may, after commencement of the proceeding and at least 15 days before the date fixed for the hearing, with or without supporting affidavits, move for a summary decision in the party's favor in all or any part of the proceeding on the grounds that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. Any other party may, within 10 days after service of the motion, serve opposing affidavits or countermove for summary decision. The Administrative Law Judge may set the matter for argument and call for the submission of briefs.

(b) The Administrative Law Judge may grant the motion if the filed documents, affidavits, material obtained by discovery or otherwise, or matters officially noted show that there is no genuine issue as to any material fact and that a party is entitled to a summary decision as a matter of law.

(c) Affidavits must set forth such matters as would be admissible in evidence and must show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of facts contained in the opposing party's pleadings. The response to the motion, by affidavits or as otherwise provided in this section, must provide a specific basis to show that there is a genuine issue of fact for the hearing.

(d) Should it appear from the affidavits of a party opposing the motion that the opposing party cannot, for reasons stated, present by affidavit matters essential to justify the party's opposition, the Administrative Law Judge may deny the motion for summary decision, may order a continuance to permit information to be obtained, or may make such other order as is just.

(e) The denial of all or any part of a motion for summary decision shall not be subject to interlocutory appeal.

§ 20.902 Decision of the Administrative Law Judge.

(a) After the closing of the record of the proceeding, the Administrative Law Judge shall prepare a decision containing—

(1) Findings on all material issues of fact and conclusions of law, and the basis for each;

(2) The disposition of the case, including the assessment of a class II civil penalty, as appropriate;

(3) The date upon which the decision will become effective;

(4) A statement of further right to appeal; and